

1
2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 BARON BEMENT,

Case No. 3:12-cv-00475-MMD-WGC

7 Plaintiff,

ORDER

8 v.

9 JAMES G. COX, *et. al.*,

10 Defendant.

11
12 On June 26, 2017, Plaintiff Baron Bement filed an amended complaint pursuant to
13 § 504 of the Rehabilitation Act, 29 U.S.C. § 794. (ECF No. 70.) On July 7, 2020 in a Joint
14 Status Report submitted to the Court's order to file a proposed joint pretrial order, the
15 parties gave notice that Bement passed away on June 8, 2020. (ECF No. 124.) Defendant
16 then filed a suggestion of death on the record. (ECF No. 126.) On July 8, 2021, pursuant
17 to Federal Rule of Civil Procedure 25(a)(1), the Court directed any party or the decedent's
18 successor or representative to file a motion for substitution within 90 days after service of
19 a statement noting death. (ECF No. 125.) That deadline has now expired, and no party
20 has filed a motion for substitution.¹

21 Under Federal Rule of Civil Procedure 25(a)(1), "[i]f a party dies and the claim is
22 not extinguished, the court may order substitution of the proper party. A motion for
23 substitution may be made by any party or by the decedent's successor or representative.
24 If the motion is not made within 90 days after service of a statement noting the death, the
25 action by or against the decedent must be dismissed." Fed. R. Civ. P. 25(a)(1).

26
27 ¹On December 16, 2020, Defendants filed a motion to dismiss the action with
28 prejudice because no party had been substituted. (ECF No. 127.) No response was filed,
and on March 23, 2021, Defendants filed a reply further urging the Court to dismiss the
matter with prejudice. (ECF No. 128.) Because the Court is dismissing the action, the
Court will deny the motion to dismiss (ECF No. 127) as moot.

1 It is therefore ordered that this action is dismissed with prejudice because no
2 motion for substitution was made in accordance with the Court's order.

3 It is further ordered that Defendants' motion to dismiss (ECF No. 127) is denied as
4 moot.

5 The Clerk of Court is directed to enter judgment accordingly and close this case.

6 DATED THIS 29th Day of April 2021.

7
8 

9 _____
10 MIRANDA M. DU
11 CHIEF UNITED STATES DISTRICT JUDGE
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28